## APPENDIX.

Section 2a(7) of the Bankruptcy Act [Title 11, U. S. Code, Sec. 11a(7)] as amended by Public Law 456, 82d Congress, 2d Session [Act of July 7, 1952, Sec. 2(b), 66 Stat. 420]:

### AN ACT

To amend the Bankruptcy Act, approved July 1, 1898, and Acts amendatory thereof and supplementary thereto; • • •

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, • • •

Sec. 2(b) Paragraph (7) of subdivision a of [section 2 of such Act, as amended] is amended to read as follows [new matter italicized, deletion in brackets]:

"(7) Cause the estates of bankrupts to be collected, reduced to money, and distributed, and determine controversies in relation thereto, except as herein otherwise provided, and determine and liquidate all inchoate or vested interests of the bankrupt's spouse in the property of any estate [,] whenever, under the applicable laws of the State, creditors are empowered to compel such spouse to accept a money satisfaction for such interest; *and where in a controversy arising in a proceeding under this Act an adverse party does not interpose objection to the summary jurisdiction of the court of bankruptcy, by answer or motion filed before the expiration of the time prescribed by law or rule of court or fixed or extended by order of court for the filing of an answer to the petition, motion or other pleading to which he is adverse, he shall be deemed to have consented to such jurisdiction;*"

SENATE

82d Congress—2d Session

Calendar No. 1299
Report No. 1395

AMENDING THE BANKRUPTCY ACT

• • • • • • •

Mr. McCarran, from the Committee on the Judiciary, submitted the following

REPORT

[To Accompany S. 2234]

• • • • • • •

Section 2(b) of the bill amends section 2a(7) of the act by adding a provision which corrects a defect that has arisen under section 23a of the act. Rather than amend section 23a, it is deemed more effective to expand section 2a(7) so that the change will then become applicable to the entire act, including the debtor-relief chapters.

Under section 23a, where a controversy involves property which is not in the actual or constructive possession of the bankruptcy court, but is held adversely, nevertheless, the court is vested with summary jurisdiction where the respondent consents thereto; and it has generally been held that a respondent consented when he did not object to such jurisdiction, either by preliminary motion or in his answer, and proceeded on the merits (*Moonblatt v. Kosmin,* 55 Am. B. R. (N. S.) 267, 131 F. 2d 412 (C. C. A. 3d 1943)). However, in *Cline v. Kaplan* (323 U. S. 97), the Supreme Court, in 1944, overruled this line of cases and held, in effect, that a respondent has not consented to the summary jurisdiction of the bankruptcy court if he made formal objection at any time before the entry of the final order in the proceeding, even though the controversy had gone forward on its merits without his preliminary objection to jurisdiction.

This decision has unsettled sound procedure and unnecessarily delays an expeditious administration in bankruptcy. A respondent may now proceed on the merits in the bankruptcy court and gamble on a favorable decision in the summary proceeding, and when he senses that the decision will be against him on the merits, he may interpose his formal objection to jurisdiction at any time before the entry of the order, and, should his objection be sustained, the summary proceeding must be dismissed. In such cases, the trustee is required to relitigate the issues by a plenary action.

The proposed amendment is intended to overcome this unsatisfactory situation and is keyed to rule 12(h) of the Federal Rules of Civil Procedure, which requires the timely interposition of an objection to jurisdiction and, if not so made, the defense is deemed waived.

HOUSE OF REPRESENTATIVES

82d Congress—2d Session
Report No. 2320

• • • • • •

MR. FEIGHAN, from the Committee on the Judiciary, submitted the following

REPORT

[To Accompany S. 2234]

• • • • • •

Section 2(b) of the bill amends section 2a(7) of the act by adding a provision correcting a defect which has developed in section 23a of the act. It has seemed wiser, however, to amend section 2a(7) rather than section 23a, in order to make the change applicable to the entire act including the debtor relief chapters.

The bankruptcy court, where a controversy involves property not in its actual or constructive possession, and adversely held, nevertheless has summary jurisdiction if the respondent consents thereto; and it has generally been held that a respondent consented when he did not object to such jurisdiction, either by preliminary motion or in his answer, and proceeded on the merits. *Moonblatt v. Kosmin*, 55 Am. B. R. (N. S.) 267, 139 F. 2d 412 (C. C. A. 3d 1943). However, in 1944, in *Cline v. Kaplan*, 323 U. S. 97, the Supreme Court overruled this line of cases and held, in effect, that a respondent is not to be deemed to have consented, if he made formal objection to the summary jurisdiction at any time before entry of the final order in the proceeding, even though the controversy had been proceeded with on its merits without his objecting to jurisdiction. This holding has unsettled sound procedure and an expeditious administration in bankruptcy. A respondent may now proceed on the merits and gamble on a favorable decision. When he perceives or fears that the decision

will be against him on the merits, he may interpose his formal objection to jurisdiction at any time before the entry of the order, and, should his objection be sustained, the summary proceeding must be dismissed. In such event, the trustee is required to relitigate the issues in a plenary action.

The proposed amendment is intended to overcome this unsatisfactory situation and is keyed to rule 12(h) of the Federal Rules of Civil Procedure, which requires the timely interposition of an objection to jurisdiction and, if not so made, the defense is deemed waived.